

REMARKS-General

1. The amended independent claim 27 incorporates all structural limitations of the original claim 1 and includes further limitations previously brought forth in the disclosure. No new matter has been included. All claims 27-30 and 39-46 are submitted to be of sufficient clarity and detail to enable a person of average skill in the art to make and use the instant invention, so as to be pursuant to 35 USC 112.

Regarding to Rejection of Claims 37-30 and 35-46 under 35USC102

2. The Examiner rejected claims 37-30 and 35-46 as being anticipated by French Patent FR 2536247 to Vatan. Pursuant to 35 U.S.C. 102, "a person shall be entitled to a patent unless:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.

3. In view of 35 U.S.C. 102(b), it is apparent that a person shall not be entitled to a patent when his or her invention was patent in this country more than one year prior to the date of the application for patent in the United States.

4. However, the Vatan patent and the instant invention are not the same invention according to the fact that the independent claim 1 of the Vatan patent does not read upon the instant invention and the independent claim 27 of the instant invention does not read upon the Vatan patent too. Apparently, the instant invention, which discloses a method for guiding plant stem and branch growth, should not be the same invention as the Vatan patent which discloses a fastening device.

5. Accordingly, Vatan fails to anticipate the distinctive features of the instant invention as follows:

(a) In claim 27, "a plurality of **elongated slits** spacedly and inclinedly cut along two longitudinal edges of the tail portion of the binding member" is claimed to form a plurality of locking teeth respectively, wherein Vatan merely teaches the end 5' of the arm 5 cut in the form of a notch can penetrate without any mention of any slit formed on the binding member by a cut. As shown in Fig. 1 of Vatan, each of the notches at the

end 5' of the arm 5 has a triangular shape which is totally different from the structure of the elongated slit.

(b) In claim 27, "each of the locking teeth has **two parallel guiding edges** each having an outer end formed at the longitudinal edge of the tail portion of the guiding member and an inner end inclinedly and inwardly extended on the guiding member" is claimed, wherein Vatan merely teaches the notch, having a triangular shape, has a horizontal edge and a slanted edge by only illustrating the notch in Fig. 1 of Vatan. In other words, Vatan does not itself teach the concept of two parallel guiding edges of each of the elongated slits. The triangular notch cannot have two parallel edges.

(c) In claim 27, "each of the elongated slit has a **uniform width** from the outer end to the inner end" is claimed to configure the locking tooth, wherein Vatan does not mention any notch has a uniform width formed at the end 5' of the arm 5. The applicant respectfully submits that the elongated slit is not equivalent to the notch having a triangular shape taught by Vatan.

(d) In claim 27, "the locker slot, having a triangular shape, has an adjacent edge substantially larger than a width of the guiding member and has a width gradually increasing towards the head end of the guiding member" is claimed to configure the locker slot, wherein Vatan merely teaches a perforation 4' is made in the end of the arm 4 without any mention of any structural configuration of the perforation 4' incorporating with the notch of the arm 5. Accordingly, the only description in Vatan regarding to the notch (not even has a reference number) is illustrated in the drawings without any further disclosure in the specification. A mere recitation (only in the drawings) of the perforation 4 and notch in Vatan does not anticipate or suggest any structural configuration between the perforation and notch. In other words, Vatan does not disclose the structural relationship between (i) the transverse width of the locker slot and the width of the holding neck portion of each of the locking teeth, and (ii) the width of the locker slot and the transverse width of the locker slot and a thickness of said guiding member. Even in the drawings of Vatan cannot illustrate how the perforation 4' structurally engaging with the notch via the width and the transverse width of the perforation 4'.

(e) Vatan fails to anticipate “the tail portion of the guiding member is **twisted** to align with the adjacent edge of the locker slot” as claimed in claim 27, wherein Vatan merely teaches the end 5' penetrating into the perforation 4'. The applicant respectfully submits that by configuring the locker slot to have a transverse width larger than a width of the guiding member, the user must twist the tail portion of the guiding member to align with the adjacent edge of the locker slot in order to slide the tail portion of the guiding member through the locker slot. However, Vatan is silent about such important concept. It is apparent that Vatan fails to teach and anticipate the same recitation and limitation in the amended claim 27 of the instant invention of twisting the tail portion of the guiding member to substantially align with the adjacent edge of the locker slot.

(f) Vatan fails to anticipate “the tail portion of the guiding member is **twisted back** to its original orientation” as claimed in claim 27, wherein Vatan never disclose any twisting movement of the arm 5 as mentioned above.

(g) In claim 27, “a holding neck portion of the corresponding locking tooth is locked at the locker slot by a transverse width thereof at a position that the adjacent edge of the locker slot is engaged between the guiding edges of the respective elongated slit” is claimed, wherein Vatan merely teaches, in Fig. 5, the perforation 4' is locked at the horizontal edge of the notch only. The applicant respectfully submits that the engagement of the elongated slit is totally different from that of the notch taught by Vatan to obtain the **unexpected result of using the elongated slit**. Fig. 5 of Vatan illustrates the horizontal edges of the notch are blocked at the perforation 4' to prevent the end 5' of the arm 5 sliding out from the perforation 4'. However, the notch cannot block the forward sidling movement of the end 5' of the arm 5 within the perforation 4'. On the other hand, the elongated slit of the instant invention is adapted to block both the forward and backward sliding movements of the tail portion of the guiding member at the locker slot. It is because when the elongated slit engages with the locker slot, the adjacent edge of the locker slot is sandwiched between two guiding edges of the slit. In other words, the elongated slit of the instant invention substantially limits any unwanted lateral movement of the tail portion of the guiding member at the locker slot unless the tail portion of the guiding member is intentionally twisted to align with the adjacent edge of the locker slot.

(h) The claiming elements of a process claim are the acts in the steps included, Maki fails to anticipate the elements of (a) providing.... (b) twisting ... (c) slidably inserting and (d) twisting ... as claimed in the claim 27 as a whole. Vatan merely suggests the end 5' of the arm 5 is penetrated through the perforation 4' to form a belt. Vatan provides no substantial steps of how to do it. Moreover, a mere description of a notch and perforation does not equivalent to the elongated slit and locker slot as claimed in the instant invention.

(i) Vatan fails to anticipate how to re-bind the guiding member by (e) **twisting** the tail portion of the guiding member to align with the adjacent edge of the locker slot, (f) slidably **releasing** the tail portion of the guiding member along the adjacent edge of the locker slot, and (g) **twisting** the tail portion of the guiding member back to its original orientation as claimed in claim 28 in addition to what is claimed in claim 27 as a whole. Vatan is silent about twisting the end 5' of the arm 5 with respect to the perforation 4' and releasing the end 5' of the arm 5 along the adjacent edge of the perforation 4'.

(j) Vatan fails to anticipate and suggest "a **height** of the locker slot at least equals to the width of the guiding member" as claimed in claims 29 and 30 in addition to what is claimed in claim 27 as a whole. The only description in Vatan regarding to the perforation 4' is in the drawings. However, the drawings of Vatan still cannot clearly illustrate the structural configuration of the height of the perforation 4' and the notch.

(k) Vatan fails to anticipate and suggest "the **guiding edge of the elongated slit** is extended inclinedly at a direction corresponding to an inserting direction of the tail portion of the guiding member as claimed in claims 39-42 in addition to what is claimed in claim 27 as a whole. Vatan merely teaches the notch, having a triangular shape, has a horizontal edge and a slanted edge by illustrating the notch in Fig. 1 of Vatan.

(l) Vatan fails to teach "the tail end of the guiding member has a tapered shape having a width substantially smaller than the **transverse width** of the locker slot" as claimed in claims 43 to 46 in addition to what is claimed in claim 27 as a whole. Vatan fails to teach such concept of the width of the tapered tail end of the guiding member being smaller than the transverse width of the locker slot.

6. Accordingly, Vatan is not a qualified prior art of the instant invention and should be removed from the prior art list of the instant invention.

Response to Rejection of Claims 27-30 and 35-46 under 35USC103

7. The Examiner rejected claims 27-30 and 35-46 over Vatan in view of Finnigan (Des. 299,307). Pursuant to 35 U.S.C. 103:

“(a) A patent may not be obtained though the invention is **not identically** disclosed or described as set forth in **section 102 of this title**, if the **differences** between the subject matter sought to be patented and the prior art are such that the **subject matter as a whole would have been obvious** at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.”

8. In view of 35 U.S.C. 103(a), it is apparent that to be qualified as a prior art under 35USC103(a), the prior art must be cited under 35USC102(a)~(g) but the disclosure of the prior art and the invention are not identical and there are one or more differences between the subject matter sought to be patented and the prior art. In addition, such differences between the subject matter sought to be patented **as a whole** and the prior art are obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

9. In other words, the differences between the subject matter sought to be patent as a whole of the instant invention and Vatan which is qualified as prior art of the instant invention under 35USC102(b) are obvious in view of Finnigan at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

10. The applicant respectfully submits that in order to determine whether the differences between the subject matters sought to be patent as a whole of the instant invention and the primary prior art, Vatan, are obvious in view of the supplemental cited art, Finnigan, we have to identify all the differences between the claims of the instant inventions and Vatan. Whether the claims 27-30 and 39-46 as amended of the instant invention are obvious depends on whether the above differences (a) to (l) between the

instant invention and Vatan are obvious in view of Finnigan at the time of the invention was made.

11. Furthermore, the applicant respectfully submits that when applying 35 USC 103, the following tenets of patent law must be adhered to:

- (a) The claimed invention must be considered as a whole;
- (b) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (c) The references must be viewed without the benefit of hindsight vision afforded by the claimed invention; and
- (d) Reasonable expectation of success is the standard with which obviousness is determined.

Also, "The mere fact that a reference could be modified to produce the patented invention would not make the modification obvious unless it is suggested by the prior art." Libbey-Owens-Ford v. BOC Group, 4 USPQ 2d 1097, 1103 (DCNJ 1987).

12. Finnigan merely teaches a tomato plant support tie having two slots at two ends of the tie without any suggestion of how such slot be possibly equipped the triangular locker slot. Similarly, neither Vatan nor Finnigan suggests a method of guiding plant stem and branch growth containing the above distinctive features (a) to (l) as claimed in the instant invention as well as any combination or possibility of forming the elongated slits at the tail portion of the guiding member that the elongated slit, having two parallel guiding edges, has a uniform width to engage with the locker slot at a position that the adjacent edge of the locker slot is secured between the two guiding edges of the elongated slit to retain the engagement between the head and tail portions of the guiding member as a loop form.

13. "To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the

cited art references for combination in the manner claimed... [T]he suggestion to combine requirement stands as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness..." *In re Gorman*, 933 F.2d 982, 986, 18 USPQ 2d 1885, 1888 (Fed. Cir. 1991).

14. Accordingly, the applicant believes that neither Vatan nor Finnigan, separately or in combination, suggest or make any mention whatsoever of the difference subject features (a) to (l) as claimed in the amended claims 27-30 and 39-46 of the instant invention.

15. Applicant believes that for all of the foregoing reasons, all of the claims are in condition for allowance and such action is respectfully requested.


The Cited but Non-Applied References

16. The cited but not relied upon references have been studied and are greatly appreciated, but are deemed to be less relevant than the relied upon references.

17. In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of the objection are requested. Allowance of claims 27-30 and 39-46 at an early date is solicited.

18. Should the Examiner believe that anything further is needed in order to place the application in condition for allowance, he is requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

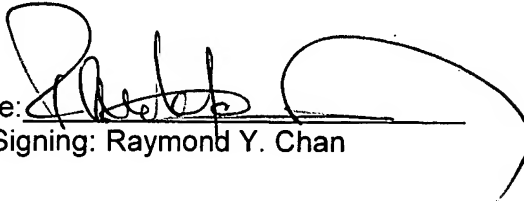


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